IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 371 of 2006

LRS.OF TRILOK CHAND
V/S
RAJ KUMAR & ORS.

Mr. AK ACHARYA, for the appellant / petitioner

Date of Order : 6.12.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant at length.

The suit of the plaintiff is that the land marked by “A”, “B”, “C”, “D” and “E” belongs to him, is enclosed by pakka wall with a gate at point “E” but then the defendant No.1, with malafide intention, filed an application before the Assistant Town Planner, Bikaner, Camp at Kuchaman, which was dismissed, thereafter the defendant No.1 with the intention to grab the land filed an application before the Municipality for allotment as strip of land whereupon notice was published, to which the plaintiff replied, thus, the suit was filed for injunction seeking to restrain the defendant from interfering with the plaintiff's possession. This suit was filed on 6.1.1986.

The defendant No.1 contended that the plaintiff

has come to the town just 5-6 years ago only, and that the plaintiff's son applied for allotment of land as strip of land and in that application the Southern boundary was shown to be the land of Balji Dosi, who was elder brother of defendant's father, and it was contended that the plaintiffs claimed under unregistered agreement dated 9.6.1981, and after filing of the suit, he got a sale deed executed and registered on 25th and 26th February, 1986 respectively, while 'bada' is the property purchased by Balji Dosi by registered sale deed.

Both the learned courts below have found, that the plaintiff has failed to produce any material to show that the land belong to his predecessor in interest, the alleged agreement dated 9.6.1981 has not been produced, and the sale deeds are of a date after filing of the suit. Then it was considered, that the plaintiff has admitted that his seller did not give patta of 'bada' to him, and he claims to be in possession since 1981 only, while the plaintiff moved an application for allotment of land through his sons Shyam Sunder and Kailash Chand in the Municipality and in that site plan, a triangle was shown to the open land and in the South thereof was shown to the land of Balji Dosi. As against this DW-5 the employee of the Municipality has deposed that the land marked by “C”, “D” and “E” in the site plan Ex.-3 is khalsa land of Municipality, while the land marked by “A”, “B”, “C” and

"D" belongs to the defendants Chhitar Mal and Rajkumar Dosi, and that the Municipality has resolved on 30.11.1985 to remove the encroachment of the plaintiff from the land marked "C", "D" and "E" vide Ex.-A/5. Thus, it has been found that the plaintiff has failed to prove his title and possession over the land in question. Consequently, the issues were also decided against the plaintiff and suit has been dismissed.

In my view when it has come on record that in the application filed by the plaintiff through his sons for regularisation of land, the Southern boundary was shown to be the land of Balji Dosi, the entire edifice of the plaintiff's case topples down about his any title over the land, whether under agreement dated 9.6.1981, or the sale deed dated 25.2.1986.

Thus, I do not find any error in the finding of the learned courts below. Thus, there is no force in the appeal and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

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